

# Journal of Collective Bargaining in the Academy

---

Volume 0 *NCSCBHEP Proceedings 2007*

Article 7

---

April 2007

## Organizing higher education in George W. Bush's Texas

Charles Zucker

*Texas Faculty Association*

Follow this and additional works at: <http://thekeep.eiu.edu/jcba>

---

### Recommended Citation

Zucker, Charles (2007) "Organizing higher education in George W. Bush's Texas," *Journal of Collective Bargaining in the Academy*: Vol. 0 , Article 7.

Available at: <http://thekeep.eiu.edu/jcba/vol0/iss2/7>

This Proceedings Material is brought to you for free and open access by The Keep. It has been accepted for inclusion in Journal of Collective Bargaining in the Academy by an authorized editor of The Keep. For more information, please contact [tabruns@eiu.edu](mailto:tabruns@eiu.edu).

## **Organizing higher education in George W. Bush's Texas**

**By**  
**Charles Zucker**  
**Executive Director**  
**Texas Faculty Association**  
*September 2005*

A few years ago, a delegation of international unionists visited the Texas AFL-CIO for the purpose of learning more about American unions. At some point in the proceedings, the unionists realized that in Texas public sector employees are prohibited from bargaining collectively.<sup>1</sup> In particular, several members of the delegation from third-world countries were shocked to discover that their public-sector counterparts could not bargain collectively in Texas. They had assumed that all public employees in the United States enjoyed bargaining rights. When the meeting had ended, they expressed great sympathy for their union brothers and sisters in Texas and offered their sincere hope that the situation would soon improve.

Although public sector employees in Texas would not be willing to trade their salary and benefits with their counterparts in third-world countries, it is undeniably true that public employees in many of those countries (Kenya, for example) enjoy a fundamental right denied to Texas public employees. In fact, since hearing this story, I have begun to refer to Texas as the "Fourth World" since we are behind much of the third-world when it comes to bargaining rights.

In this article, I shall attempt to answer the following questions:

1. What does the TFA experience teach us about the possibilities of organizing higher education in a non-bargaining state?
2. What in the TFA experience may be transferable to other non-bargaining states?
3. What could NEA do to help organize higher education employees in non-bargaining states?

### **Background**

#### **The Law**

Chapter 617, Collective Bargaining and Strikes, of the Texas Government Code:

---

<sup>1</sup> Interestingly, the proverbial camel's nose is in under the tent. For several years, policeman and firefighters have been allowed to bargain collectively under a state law that provides for an exception to the ban on public employee collective bargaining. Before exercising bargaining rights, a bargaining unit of police or firemen must first win a referendum in the community they serve. In urban areas such as Houston, McAllen and Austin, collective bargaining is taking place. Of course, strikes are still forbidden. The likelihood that this law will be extended to include educational employees, however, seems remote—especially in light of the fact that the Texas Legislature has taken a sharp turn towards the right since redistricting.

- (1) Prohibits an official of the state or a political subdivision of the state from entering into “a collective bargaining contract with a labor organization regarding wages, hours or conditions of employment of public employees;”
- (2) Prohibits an official from recognizing “a labor organization as the bargaining agent for a group of public employees;”
- (3) Prohibits public employees from striking or engaging in an organized work stoppage against the state or any of its political subdivisions;
- (4) Declares that an individual “may not be denied public employment because of the individual’s membership or non-membership in a labor organization;”
- (5) Does not “impair the right of public employees to present grievances concerning their wages, hours of employment, or conditions of work either individually or through a representative that does not claim the right to strike.”

## **TFA**

TFA was founded in 1985 as an independent organization composed largely of faculty members who had grown dissatisfied with the national AAUP because of the paucity of resources that the organization had allocated to the Texas Conference AAUP. TFA quickly formed a close relationship with the Texas State Teachers Association and NEA. In 1988, TFA voted at its annual meeting to affiliate formally with TSTA and NEA. In the same year, I resigned my higher education organizing position with IEA-NEA and accepted a position as the TFA Executive Director.

In the early years, TFA benefited from a substantial NEA organizing grant, which we used to hire three full-time organizers, and low organizing dues (under \$100 in 1988-1989). The combination of the three organizers (plus myself) and the low dues enabled TFA to grow rapidly. In 1988, we had about 300 members. Within a few years, the number had climbed to over 1,000. Our membership received a considerable boost when the Texas Federation of Teachers local at Pan American University flipped to TFA. The Pan American United Faculty remains our largest local today with about 120 members.

These heady years, however, would not last. Inevitably, the NEA organizing funds began to dry up, and, based on the agreement we had signed with TSTA and NEA, we were forced to raise dues sharply. The result was that after hitting a high of over 1,200 members in the early 1990s, our membership growth tapered off. Since the mid-1990s, TFA membership has climbed to over 1,400 on a few occasions, but mostly it has fluctuated between approximately 1,000 and 1,200 members. Today, our staff consist of a full-time Executive Director (me), a part-time administrative assistant and some part-time organizing help.

Admittedly, in a state with over 20,000 FTE faculty members, our market share is small. It is important to understand, though, that with a current membership of around 1,100, TFA remains in nosebleed country compared to the TFT’s higher education group, which has around 400 members and AAUP, which probably has around 700 members. In fact, the only faculty organization that does significantly better than TFA in terms of membership is the Texas

Community College Teachers Association (TCCTA) which claims over 5,000 members. TCCTA is an old-fashioned company union that charges low dues. In states that have bargaining rights, an organization like TCCTA would have disappeared decades ago. Community college administrators in Texas actively encourage faculty members to join TCCTA while they discourage membership in TFA.

TFA's membership niche (if one can call it that) is definitely in the state's secondary universities such as UT-Pan American and Texas State University. We have not done nearly as well in either the state's elite universities (the University of Texas at Austin, Texas A&M University-College Station) or the state's major community college systems (Dallas Area Community College System, Houston Community College System, etc.). We do have a substantial number of members at a handful of the state's smaller community colleges. TFA, for example, currently has over one hundred members at South Texas Community College in McAllen. We also have members at some of the state's health science centers, particularly the UT M.D. Anderson Cancer Center in Houston. Although TFA originally had substantial representation from private colleges and universities, the number of members from the private sector has dwindled over the years.

Comment [GWR1]: second-tier?

### **TFA's accomplishments**

Since 1988, as our membership brochure proudly announces, TFA has won some huge victories on campus, at the state Capitol and in the courthouse. What are some of these victories? TFA:

- waged a successful campaign to win the reinstatement of a tenured professor at the University of Houston-Clear Lake who had been wrongfully terminated for sexual harassment by the UH Board of Regents, prompting *Newsweek* (October 21, 1991) to refer to TFA as a "powerful teachers' union";
- secured substantial pay raises at Southwest Texas State University through a TFA budget analysis project;
- saved the jobs of Texas Southmost College tenure-track faculty members after TSC was incorporated into the University of Texas at Brownsville;
- used federal mediation to restore three non-renewed Texas State Technical College TFA leaders to their jobs and to reach an agreement with TSTC to develop a new dispute resolution system;
- led the fight in the Legislature to ensure that post-tenure review legislation did not undermine academic freedom and tenure;
- stopped a bill that would have required uniform testing for all sections of the same course;
- won a federal lawsuit against the University of Texas at Dallas when the administration terminated ten tenured professors without individual due process;
- won a lawsuit in federal court when the Texas Legislature and Texas A&M University attempted to prohibit professors from testifying in court as expert witnesses in lawsuits against the state or any of its subdivisions;
- won a judgment of \$250,000 in federal court on behalf of a member against Prairie View A&M University for violating his constitutional rights; and
- won several out of court settlements on behalf of TFA members whose rights had been violated.

Of course, as our brochure points out, the above examples represent a small sample of the hundreds of successes that TFA has had over the years.

Why have we been able to be successful in so many instances over the years in a state where we are operating without the benefit of bargaining agreements? There are three major reasons:

1. **Organizing.** The lessons I learned in the fundamentals of issue organizing in Illinois have served me (and TFA) well in Texas. In fact, without collective bargaining agreements, which tend to institutionalize relationships between higher education employers and employees, we are always in an organizing mode in Texas. The words of my former IEA/NEA colleague, Jim Nagle, have remained with me through the years, “Charles, I liked it better at Danville Area Community College before we achieved collective bargaining. Now everything is contract enforcement.”
2. **Resources.** Without a doubt, the resources that TFA has had at its disposal, largely as a result of the affiliation with TSTA and NEA, have enabled us to stand up to the big boys. This is particularly true in the legal arena. Our victory in 1991 in the *TFA v. UT-Dallas* case, for example, put TFA on the map with faculty members throughout the state.
3. **The Texas Public Information Act.** We may not have collective bargaining, but we do have a powerful public information law. Almost every public document in this state is available to its citizens by filing a Texas PIA request. We have used this law on countless occasions to “get the goods” on public institutions of higher education.

#### **TFA’s weaknesses**

It would be easy, however, to wax eloquent about TFA’s marvelous victories and to gloss over our shortcomings. The undeniable fact is that after 20 years (17 as a TSTA/NEA affiliate), we are barely able to maintain the number of members we need to remain a viable organization. Why is that? Several reasons follow (though not necessarily in their order of importance.)

#### **1. The prohibition against collective bargaining means that:**

- **TFA is sometimes powerless to do much of anything to resolve members’ problems**

Faculty members have a right to grieve, but without outside arbitration they must depend on the higher administration to overturn a decision usually made by an administrator farther down the food chain. In Texas, peer review committees are used extensively, and they can be helpful. However, it should come as no surprise to anyone that administrators frequently ignore the recommendations of these committees with impunity. Aggressive grievance representation by TFA staff members such as Robert Jackson and others has proved effective on some occasions, but there are many situations in which we are stymied.<sup>2</sup> Increasingly, the right to grieve itself is under attack.<sup>3</sup> Of course, we try to turn grievances into

---

<sup>2</sup> Regarding grievance representation in Texas, see Robert H. Jackson, “Confessions of a ‘Mad-Dog’ Grievance Representative,” *Thought and Action* (NEA Journal, Fall 2002), pp. 129-134.

<sup>3</sup> TFA recently filed a lawsuit on behalf of a member against Texas A&M University-Kingsville because the administration refused to allow the member to grieve an evaluation.

organizing issues, but the reality is that not all grievances can be used for organizing.

- **TFA misses out on opportunities to grow dramatically through winning a representation election**

Over the years, I am convinced that TFA could have won several collective bargaining campaigns had we had the right to have a representation election. For example, at the present time, the faculty at Texas A&M University-Kingsville (TAMUK) is ripe for an organizing campaign. The current administration has undermined the shared governance system. If TAMUK were in Illinois, organizers would have been swarming over the campus months ago collecting representation cards. Instead of an opportunity to increase TFA's membership, the present shared governance crisis at TAMUK has resulted in a membership decline for TFA—in large measure because many faculty members feel nothing can be done. Moreover, even when TFA wins a big victory on campus (as we have many times over the years), we cannot sustain the growth in membership that we enjoy after the big victory. For example, we may have 20 TFA members on a campus of 300 full-time faculty members before the victory, grow to a high of 80 members within a few years after the victory, but then begin a gradual decline down to between 40 or 50 members within the space of another five years.

2. **TFA's relatively high dues level means that it is difficult to recruit new members**

TFA dues for the 2005-2006 year will be \$288 for full-time faculty members and professional staff who are joining TFA for the first time. The dues for members in their second year and beyond are \$405. Now, that may not sound excessively high to those of you from bargaining states, but in Texas the resistance to TFA dues among potential members is daunting. After all, we are not able to hand new members a contract negotiated by the faculty union. TFA historically has done best in terms of recruiting when a crisis hits a campus. But, when there is no crisis, it can be slow going and the employees most likely to join TFA are those who already have a problem. The saying around the TFA office is "Get a member, get a grievance."

In TFA's early years when the dues were comparatively low, "team TFA" frequently signed up a dozen or more new members during a day of recruiting on campus; now, if we sign up two or three, we consider it a good day.

The problem of high dues is exacerbated by competition from competing organizations that offer low dues. The aforementioned Texas Community College Teachers Association currently charges \$35 annually for a membership (\$85 if you wish to purchase liability insurance). The Texas Association of College Teachers (TACT), which operates only in universities, currently charges annual dues of \$90 (\$149 with liability insurance.) So, TFA's full dues rate is almost five times that of TCCTA and almost three times that of TACT.

Why are TFA dues so high? The answer, of course, is because of our affiliation with TSTA and NEA. TSTA dues for a full-time member for 2005-2006 are \$243. NEA dues are \$140. That adds up to \$383. TFA adds our own dues of \$22 on top of the \$383 to reach the total of \$405. One can argue, of course, that it takes dues of over \$400

annually to provide the kinds of services that our members expect. This argument certainly has some merit, but the fact is that we have set the dues at a level that has simply priced us out of the market as far as countless Texas faculty members are concerned.

### **3. TFA suffers from the same problems as many other higher education affiliates**

It would be nice to blame all of TFA's problems on the prohibition against collective bargaining, but the fact is that we share many problems with our counterparts across the nation. The number one problem, of course, is finding leaders who are willing to commit time and energy to building the organization. Where we have good leaders, we have members. In spite of an ongoing TFA effort to identify and train new leaders, they remain as scarce as hen's teeth. Second, and related to the first problem, is the "graying" of the professorate. Too often, we find ourselves asking the same leaders over and over again to take on a new assignment. But, many of these silver haired leaders are growing weary of being asked to accept new Association responsibilities. Some have already retired. Texas is hiring new professors now in droves, but it is harder than ever to recruit them and move them into leadership positions because of the work speed up in higher education, which leaves them precious little time to become involved in faculty organizations, and because they frequently lack the commitment to causes that characterizes the generation that came to maturity in the 1960s and 1970s.

## **Conclusion**

Let's revisit the three questions I asked at the beginning of this article.

### **1. What does the TFA experience teach us about the possibilities of organizing higher education in non-bargaining states?**

2.

If nothing else, it certainly teaches us that it is possible. Yet, based on data from the NEA 2005 Handbook, outside of Texas, only Alabama with 3,249 members in September 2004 had a substantial higher education membership. In most of the non-bargaining states, the higher education membership is pathetically small. For example, North Carolina had 26, Mississippi 103; and Virginia 7. Admittedly, the population of potential higher education members in other non-bargaining states is far smaller than here in Texas, but proportionally the potential for substantial growth is substantial.

### **3. What in the TFA experience may be transferable to other non-bargaining states?**

4.

Much in the TFA experience is transferable. Shortly after I arrived in Texas, I presented a workshop for our emerging leaders on issue organizing. When the session was over, one of our leaders sidled up to me and said, "Charles, that may have worked up north in Illinois where you're from, but it won't work here in Texas. It's much more conservative here." The fact is, though that issue organizing (and organizing in general) does work here—even deep down in the Rio Grande Valley where I am told the "patron" system is still widespread. That's not to say that it is not tougher to do organizing in Texas than in other states where a strong union culture prevails. In fact, practically

everything TFA has done, from its membership pamphlets to its use of electronic communications for recruiting, is transferable to non-bargaining states. Of course, many of the particulars will be different.

3. **What could NEA do to help organize higher education employees in non-bargaining states?**

4.

First, let me say that over the years that NEA has been generous in terms of the resources it has pumped into the Texas Faculty Association, especially in our formative years. Without that commitment of resources, TFA would be just another footnote in the annals of failed faculty organizations. However, it is also true that TFA turns over a substantial amount of dues to NEA annually and has done so for over a decade. In short, NEA has hardly taken a financial bath on TFA. I say this because I think it is important for NEA to realize that funds invested in higher education organizing in non-bargaining states is NOT automatically money thrown down a rat hole.

One thing is clear to me from the TFA experience: NEA needs to develop a different model for building higher education affiliates in non-bargaining states. Basically, the one-size fits all approach—that is, what works in Illinois or California will work in Texas—must be tossed. In short, a collective model approach to getting a new higher education organization up and running does not work in a non-bargaining state. Most importantly, the phase-in of full dues must be extended over a much longer period of time than we were granted in Texas—instead of three years of organizing dues, TFA should have at least five years and maybe as many as ten. I understand that Japanese corporations produce 50-year plans. We did not need fifty years, but we did need much more time to build up our membership to between 2,000 and 3,000 members before we went to full dues. When we did go to full dues, the substantial membership growth we had experienced every month with organizing dues ground to a halt. Clearly there is more financial risk for NEA in extending the period of organizing dues, but then the potential rewards are much greater. Second, non-bargaining higher education affiliates could use more assistance from NEA higher education. The small NEA higher education staff does a fine job, but TFA desperately needs some products to entice new members into joining. I understand that the old staple *Advice for the Untenured* is out of print. It should be on CD that we could provide to new tenure-track faculty members who join TFA. Maybe the lack of products is not a problem for large higher education bargaining units but it is for TFA. Indeed, many NEA higher education products (contract analysis, for example) are of little use to non-bargaining affiliates like TFA. Of course, we promote TSTA and NEA member benefits, but they in themselves are not enough.

Enough grumbling. The fact is that after two decades TFA is alive and reasonably well in George W. Bush's Texas. As I like to say to my former colleagues, when you grow tired of organizing up in Illinois, come down here and join me in the belly of the beast.